had concocted the charge. That accusation was entirely unsupported in evidence and must have reacted unfavourably on the appellant. I think that there can be no suggestion that this is that kind of case. However, in his grounds of judgment the Magistrate went on to say: "I was so convinced that accused went to the secluded quarry with the girl that the only possible defences to which I could reasonably have paid attention would be that accused saw an animal crawling up the girl's skirt, or that he smacked her because she misbehaved herself while out with him". The visit to the quarry was only testified to by the girl herself; there was no corroboration, and the girl was unsworn. Even the strongest case can be confronted by a stronger, and this case could not be described as strong. Young children are at the best unreliable witnesses, and this passage displays an attitude which would be wrong with regard to any witness or any number of witnesses. In view of this I cannot regard the conviction as satisfactory. The appeal must be allowed and the conviction quashed.

Appeal allowed.

KOH ENG SOON v. REX.

[App. Crim. Juris. (Murray-Aynsley, C.J.)
December 15, 1949]
[Singapore — Magistrate's Appeal No. 153 of 1949]

Penal Code S. 354 — Outraging modesty — Need for corroboration of evidence of complainant.

In this case the appellant had been convicted of an offence under S. 354 of the Penal Code. One of the grounds taken on appeal was that there was no corroboration of the evidence of the complainant.

Held, that in such a case corroboration is desirable and as the learned Magistrate had not given sufficient attention to this matter, the conviction must be quashed.

Cases referred to :—

(1) *Rex v. Baskerville* (1916) 2 K.B. 658.

(2) *Rex v. Velayuthan* (1935) M.L.J. 277.

MAGISTRATE'S APPEAL.

D. K. Walters (*C. H. Koh* with him) for the Appellant.

A. H. Simpson (D. P. P.) for the Respondent.

Murray-Aynsley, C. J. : — In this case the appellant had been convicted of an offence under section 354 of the Penal Code and sentenced to 2 months rigorous imprisonment.

Various objections were taken to the proceedings in the Court below. I think that the consideration of one matter is sufficient. In this case the complainant was an adult. In cases of this kind corroboration is desirable though not technically essential. Where the case has been heard by a magistrate or a District Judge the appellate Court must be satisfied that the Court below appreciated fully the desirability of having corroboration and was not under a misapprehension that something was corroboration which as a matter of law was not. In this connection it should be noted that what is described as corroboration in section 157 of the Evidence Ordinance is not corroboration for this purpose. The effect of section 157 is to render generally admissible statements by the complainant which in England are only admissible in cases of rape and kindred offences. Such statements are not corroboration in England and therefore, where as a matter of practice corroboration is required or desirable, they should not be regarded otherwise here.

The question of the complaint in these cases is different from that of corroboration. It is not in any way at the present time a legal requirement, but where there is no complaint within a time that is, in the circumstances reasonable, naturally no Court would convict, on the evidence of the complainant.

The law as to corroboration is laid down fully in the case of *Rex v. Baskerville*[1] and applied locally in *Rex v. Velayuthan*[2].

In the present case I do not consider that there was any corroboration and I am not satisfied that the Magistrate, who otherwise gave extremely careful attention to the matter, gave sufficient attention to this aspect of the case.

In the circumstances the appeal must be allowed and the conviction quashed.

Appeal allowed.

E. H. BATTAT & ANOTHER v. REX.

[C. C. A. (Murray-Aynsley, C. J., Evans and Gordon-Smith, JJ.), January 16, 1950]
[Singapore — Criminal Appeal No. 43 of 1949]

Proclamations issued by or under the authority of the Supreme Allied Commander — Validity of — Straits Settlements (Repeal) Act, 1946 — Singapore Colony Order in Council, 1946, ss. 1(2), 2, 42 and 45.

In this case the appellants were convicted of certain offences against the Finance Regulations made under the Finance Regulations Proclamation issued by the Supreme Allied Commander. The validity of all these convictions depended upon whether or not at material times these regulations were in force in the Colony.

Held, that (1) the Finance Regulations Proclamation of the Supreme Allied Commander in South East Asia was merely the order of a military commander and has no legal effect unless it has at some subsequent time been enacted as a law; (2) the Straits Settlements (Repeal) Act, 1946, by section 2 gives the Crown power to legislate for the Colony by Order in Council; (3) by sections 42 and 2 of the Singapore Order in Council the Proclamations of the Supreme Allied Commander in South East Asia were made law in the Colony; (4) the Finance Regulations Proclamation is accordingly now valid as a law and the conviction of the appellants must be upheld.

COURT OF CRIMINAL APPEAL.

Sir Roland Braddell, D. K. Walters and *L. A. J. Smith* for the 1st Appellant.

D. K. Walters and *Wee Chong Jin* for the 2nd Appellant.

A. D. Farrell and *A. H. Simpson* for the Crown.

At the Conclusion of the hearing the Court dismissed the appeal and indicated that they will give their reasons in writing later.

Murray-Aynsley, C. J. : — In this case the appellants were convicted of certain offences against the Finance Regulations made under the Finance Regulations Proclamation and with conspiracy to contravene the said regulations. The validity of all these convictions depends upon whether or not at material times these regulations were in force in the Colony.

It is necessary to consider briefly the history of this proclamation and other proclamations. During the period from August of 1945 to March 1946 a series of proclamations was issued by or under the authority of the Supreme Allied Commander in South East Asia who was an officer in His Majesty's Forces. Among these was the proclamation in question. A considerable time was taken in consideration of the legal effect of these proclamations. We do not think that this was necessary. It is quite clear that during a period and in an area in which circumstances prevent the normal functioning of the civil authority, military authority has under no circumstances any power of legislation.

The only legal consequence of such a state of affairs is that necessity may justify legally action taken against persons and property which otherwise would subject the person responsible to civil or criminal proceedings. Disobedience to the orders of a military commander may justify sanctions against persons not subject to military law by statute. But these orders are not in any sense law and they cease to have even this sort of authority when once the emergency which caused them to be issued has passed.

This proclamation is merely an order of a military commander. Unless it has at some subsequent time been enacted as a law it can have no legal effect. The sole question is whether it has been enacted as law in the Colony.

For this purpose it is necessary to consider subsequent legislation.

The first in point of time is the Straits Settlements (Repeal) Act 1946. This Act repealed the Straits Settlements Act of 1866 and gave the Crown powers by Order in Council to make provision for the government of the territories concerned. In particular section 1, sub-section (2), gave power to adapt the existing laws to the new form of government and section 2 gave power to legislate for the future by Order in Council by applying the British Settlements Act, 1887 and 1945 to the territories. The Crown had enjoyed an identical power under the repealed statute.

By virtue of the powers under this statute the Singapore Order in Council was made. This Order in Council established the present form of government in Singapore. Among other things it established the present Supreme Court and by section 42 it provided for the law to be administered in the newly established Colony. It provided that the "existing laws shall ..... continue to have effect in the Colony". If this had stood alone the military proclamations would not have been affected. But section 2 contains a definition of 'existing laws'. This definition reads as follows :—

> "The existing laws" means the common law, the doctrines of equity and all Acts of Parliament, Orders in Council, Ordinances of the Legislature of the Colony of the Straits Settlements, Proclamations issued by the Governor of the Straits Settlements, or by or under the authority of, the Supreme Allied Commander South East Asia (other than the proclamations establishing the British Military Administration and delegating powers thereunder) and all Rules, Regulations and By-laws made thereunder and all other enactments or instruments having the force of law in the territory comprising the Colony or in any part thereof immediately prior to the appointed day, whether the same were administered by the British Military Administration or not.

It will be seen that this definition expressly includes "Proclamations issued ..... by or under the authority of the Supreme Allied Commander South East Asia" (with certain exceptions). But this is governed by the succeeding words "having the force of law ..... immediately prior to the appointed day".

Now it is clear that these proclamations never had the force of law at any time prior to establishment of the Colony of Singapore in the sense that the other things specified, e.g. Acts of Parliament, Ordinances of the Legislature of the Straits Settlements, etc. But if this interpretation is adopted the introduction of any reference to these Proclamations in the definition becomes futile. It is therefore necessary to put some other construction on the words. In relation to these Proclamations we consider that these words must be taken to refer to the *de facto* authority of the Proclamation under the military regime.

Section 45 clearly expresses an intention to treat these Proclamations as law in force in the period before the appointed day.

It was clearly within the scope of section 2 of the Repeal Act to make the proclamations law for the Colony. Although it is not done in express terms we think this intention can be found by reading section

42 together with the definition. Section 45 confirms this construction.

In view of this it is, we think, unnecessary to consider whether, if the Order in Council had failed to make the proclamations into law, subsequent legislation in the Colony had had that effect.

Appeal dismissed.

REX v. LEE AH PHUA & 2 OTHERS.

[App. Crim. Juris. (Murray-Aynsley, C.J.) January 20, 1950]

[Singapore — Special Case No. 6 of 1949]

Criminal Procedure — Holding a view of the scene — Purpose and scope of.

In this case the accused were charged as follows:—

"That you on or about 9 p.m. on the 21.11.49, in house No. 844-16, Upper Serangoon Road, Singapore, did assist in the carrying on of a public lottery to wit Chap Ji Ki and that you have thereby committed an offence punishable under Sec. 4(c) Cap. 30."

The accused who appeared in person claimed trial and were released on bail, the case being set down for hearing on the 12th December 1949. The Prosecutor invited the Court to visit the scene at the earliest possible opportunity alleging that there were certain temporary erections in the house concerned, which would be relevant to raise presumptions under s. 15 of the Common Gaming Houses Ordinance (Cap. 30), and were likely to be removed by the accused if the view were delayed. The Police Magistrate viewed the scene on the afternoon of the same day observing all proper precautions. One of the witnesses of the prosecution drew the attention of the Magistrate to a pasteboard door, which was invisible from outside and which could only be opened or closed from inside, a steep ladder, a pasteboard wall, a pasteboard sliding door, and a pasteboard ceiling trap-door which could be bolted only from the top (attic). The first accused also drew the Magistrate's attention to two particular points in the attic. Second and third accused were present. Both parties informed the Magistrate that he should note these things since evidence would be given concerning them. On the 12th December 1949, Messrs. F. B. Oehlers and Tampoe Phillips appeared in Court as Counsel for the accused, and submitted objections to his hearing of the case and accordingly the Police Magistrate transferred this case to another Court.

In a special case stated by the learned Magistrate the High Court was asked for its opinion on the following questions:—

(1) whether a Court may view a **locus in quo** before the hearing of the charge;

(2) whether a Court may do so before the accused have had opportunity of engaging Counsel;

(3) whether it would be an irregularity or an illegality if the answers to (1) or (2) or both are in the negative.

Held, that a view should take place only after the hearing has began and its scope should be limited to an examination of the place. A view should only be used for the purpose of examination of what may be called the permanent features of the place. For merely temporary features, e.g. the position of marks on a road, full use should be made of plans and photographs coupled with the oral evidence of reliable witnesses. If a view attempts to do more than this, there is always the objection that the judge is being converted into a witness.

Case referred to:—

(1) *London General Omnibus Co. v. Lavell* (1901) 1 Ch. 135.

SPECIAL CASE.

A. H. Simpson (D. P. P.) for the Crown.

Murray-Aynsley, C. J.: — There is no express statutory authority for holding a view in criminal cases except section 208 which only deals with trials by jury. It has however been decided that it is not illegal for Magistrates and District Judges to visit the *locus in quo* concerned in any case which they have to try.

The practice of holding views has been common in England and elsewhere for many years but there is very little authority on the subject. The only observations of general import on the subject are to be found in *London General Omnibus Co. v. Lavell*[1].

There Lord Alverstone said (at p. 138) "... a very undesirable and erroneous practice might grow up with reference to the viewing or seeing by the judge of the subject-matter of the action ..... I should be very sorry to endorse the idea, that a judge is entitled to put a view in the place of evidence. A view, as I have always understood, is for the purpose of enabling the tribunal to understand the questions that are being raised, to follow the evidence, and to apply the evidence."

I think that a view should take place only after the hearing has begun. Its scope should be limited to an examination of the place. All that should be said should be for the purpose of identification of the site, as in section 208, and this preferably by a person already sworn as a witness.

A view should only be used for the purpose of examination of what may be called the permanent features of the place. For merely temporary features such as e.g. those indicated in the present case, or in other cases, the position of marks on the road, or of the body of a deceased person, full use should be made of plans and photographs coupled with the oral evidence of reliable witnesses.

If a view attempts to do more than I have indicated, there is always the objection that the judge is being converted into a witness. There is also the possibility that the Magistrate present at the view may not be available for the ultimate hearing of the case if the view is held before the hearing, and also if the Magistrate forms his opinion otherwise than on evidence there will not be a proper record for a Court hearing an appeal.

Order accordingly.